

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHNATHAN HOWARD KIGER,
Plaintiff,
v.
TRACY JOHNSON, et al.,
Defendants.

No. 2:23-cv-1263 DC SCR P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. On July 21, 2025, the undersigned screened plaintiff's third amended complaint and determined it failed to state any claims upon which relief can be granted. (ECF No. 31.) Specifically, plaintiff failed to plead facts linking any of the twenty named defendants to the alleged unlawful interference with his legal mail. Plaintiff was given thirty days to file a fourth amended complaint. (*Id.*) Plaintiff now requests a ninety-day extension of time to file his amended complaint. (ECF No. 33.) For good cause shown, plaintiff's request is granted.

Plaintiff has also filed a motion for appointment of counsel. (ECF No. 32.) For the reasons set forth below, the undersigned finds that plaintiff has not demonstrated the exceptional circumstances necessary to warrant the court to request the voluntary appointment of counsel.

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PLAINTIFF'S MOTION TO APPOINT COUNSEL

I. Plaintiff's Motion

3 Plaintiff states that he is continuing to face unlawful interference with his legal mail.
4 (ECF No. 32 at 1-2.) However, he has been unable to identify the individuals responsible. He
5 requests the assistance of counsel to help him identify these individuals and cure the linkage
6 problems identified in the court's screening orders. (*Id.* at 2.)

7 Plaintiff claims his imprisonment is preventing him from obtaining the “significant
8 investigative information” needed to identify defendants and prison officials will not assist. (ECF
9 No. 32 at 2-3.) He is indigent and cannot hire a private investigator on his own. (Id. at 3.)
10 Further, plaintiff also has a visual impairment that causes migraine headaches from excessive
11 reading. As a result, he is unable to study federal law or navigate the complex legal issues
12 involved in his case. (Id.) Finally, plaintiff claims reprisal has increased since the court allowed
13 him to file an interrogatory regarding prison mailroom staff. (Id.)

II. Legal Standard

15 District courts lack authority under 28 U.S.C. § 1915 to require counsel to represent
16 indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298
17 (1989). In exceptional circumstances, the court may request that an attorney voluntarily represent
18 such a plaintiff. See 28 U.S.C. § 1915(e)(1); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
19 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). The test for exceptional
20 circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and
21 the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal
22 issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Weygandt v.
23 Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack
24 of legal education and limited law library access, do not establish exceptional circumstances that
25 would warrant a request for voluntary assistance of counsel. Wood, 900 F.2d at 1335; Riley v.
26 Franke, 340 F. Supp. 3d 783, 787 (E.D. Wis. 2018).

27 Beyond § 1915(e)(1), other sources of law may implicate a request for counsel. For
28 example, appointed counsel may be required in a civil proceeding as an accommodation for a

1 litigant who is disabled. See Franco-Gonzalez v. Holder, No. 10-cv-02211 DMG (DTBx), 2013
2 WL 3674492, at *3-*9 (C.D. Cal. Apr. 23, 2013) (granting summary judgment to class of
3 mentally disabled individuals in civil immigration proceedings on their request for appointed
4 representatives under the Rehabilitation Act). Due process may also require appointment of
5 counsel in certain proceedings. See Turner v. Rogers, 564 U.S. 431, 444-45 (2011) (analyzing
6 request for appointment of counsel in civil proceeding under the Mathews v. Eldridge, 424 U.S.
7 319 (1976), procedural due process framework).

8 **III. Discussion**

9 Having considered the authorities above, the court finds that plaintiff has failed to meet
10 his burden of demonstrating exceptional circumstances warranting the appointment of counsel at
11 this time. Plaintiff's indigency and lack of legal education and investigation resources are
12 circumstances common to most prisoners. While the court is sympathetic to plaintiff's visual
13 impairments, his pleadings and investigation so far – particularly his efforts between his second
14 and third amended complaint to identify the prison's mailroom staff – suggest to the court that he
15 is able to meaningfully prosecute his case. Cf. Franco-Gonzalez, 2013 WL 3674492, at *4
16 (appointing counsel under Rehabilitation Act where plaintiffs' mental health disabilities
17 prevented their meaningful participation in court proceedings).

18 The court recognizes that it is extremely difficult for plaintiff to identify the mailroom
19 staff responsible because the alleged mail interference is not happening in his presence. But as
20 the court explained in the screening order, plaintiff must do more than list twenty people who are
21 potentially responsible for the alleged violations of his rights. Plaintiff can provide facts, based
22 on information and belief, that support reasonable inferences of a defendant's interference with
23 his legal mail. Examples of such facts include the person's position and responsibilities in the
24 mailroom, their shifts, which housing units they are responsible for, and so forth. Should plaintiff
25 choose to file a fourth amended complaint, he is advised to include such facts to the best of his
26 abilities.

27 Finally, regarding the alleged reprisals for his investigation, plaintiff is advised that he
28 may file a new action or seek to supplement his complaint pursuant to Rule 15(d) of the Federal

1 Rules of Civil Procedure. That rule states:

2 On motion and reasonable notice, the court may, on just terms, permit a party to
3 serve a supplemental pleading setting out any transaction, occurrence, or event
4 that happened after the date of the pleading to be supplemented. The court may
5 permit supplementation even though the original pleading is defective in stating a
6 claim or defense. The court may order that the opposing party plead to the
7 supplemental pleading within a specified time.

8 Fed. R. Civ. P. 15(d).

7 CONCLUSION

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff's motion for the appointment of counsel (ECF No. 32) is denied without
10 prejudice;

11 2. Plaintiff's motion for an extension of time (ECF No. 33) is granted; and

12 3. Plaintiff is granted ninety days from the date of this order in which to file a fourth
13 amended complaint.

14 DATED: August 20, 2025



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16 SEAN C. RIORDAN
17 UNITED STATES MAGISTRATE JUDGE
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